

**Illinois Department of Transportation**

Division of Traffic Safety

3215 Executive Park Drive / P.O. Box 19212 / Springfield, Illinois / 62794-9212

ILLINOIS MOTOR CARRIER SAFETY REGULATIONS**Amended November 2004****ILLINOIS DEPARTMENT OF TRANSPORTATION
DIVISION OF TRAFFIC SAFETY****CONTENTS**

PART	DESCRIPTION
Part 385	Safety Fitness Procedures
Part 386	Procedures and Enforcement
Part 390	Motor Carrier Safety Regulations: General
Part 391	Qualification of Drivers
Part 392	Driving of Commercial Motor Vehicles
Part 393	Parts and Accessories Necessary for Safe Operation
Part 395	Hours of Service of Drivers
Part 396	Inspection, Repair and Maintenance
Part 397	Transportation of Hazardous Materials; Driving and Parking

Note: New language is underscored.

TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER d: MOTOR CARRIER SAFETY REGULATIONS

PART 385
SAFETY FITNESS PROCEDURES

Section

385.1000	Purpose
385.1010	Definitions
385.1020	Unsatisfactory Rated Motor Carriers

AUTHORITY: Implementing, and authorized by Sections 18b-102 and 18b-105 of, the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B].

SOURCE: Adopted at 25 Ill. Reg. 2131, effective January 17, 2001; amended at 26 Ill. Reg. 8966, effective June 5, 2002.

Section 385.1000 Purpose

- a) This Part establishes procedures to prohibit motor carriers receiving a safety rating of “unsatisfactory” from the Federal Motor Carrier Safety Administration (FMCSA) from operating a commercial motor vehicle in Illinois.
- b) This Part applies to all motor carriers subject to the requirements of this Subchapter, except non-business private motor carriers of passengers as defined in 92 Ill. Adm. Code 390.1020.

(Source: Amended at 26 Ill. Reg. 8966, effective June 5, 2002)

Section 385.1010 Definitions

As used in this Part:

“Commercial Motor Vehicle” has the same meaning as ascribed to it in 92 Ill. Adm. Code 390.1020.

“Compliance Review” means an on-site examination of a motor carrier’s operations, such as the drivers’ hours of service, maintenance and inspection, driver qualification, commercial drivers license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to

determine whether a motor carrier meets the safety fitness standard. A compliance review may be conducted in response to a request to change a safety rating, to investigate potential violations of safety regulations by a motor carrier, to investigate complaints, or other evidence of safety violations. The compliance review may result in the initiation of an enforcement action. (49 CFR 385.3, October 1, 2001)

“Department” means the Illinois Department of Transportation.

“Federal Motor Carrier Safety Administration (FMCSA)” means an agency within the United States Department of Transportation.

“Out-of-Service Order” means a prohibition against operating a commercial motor vehicle.

“Safety Management Controls” means the system, policies, programs, practices, and procedures used by a motor carrier to ensure compliance with applicable safety and hazardous materials regulations, that ensure the safe movement of products and passengers through the transportation system, and that reduce the risk of highway accidents and hazardous materials incidents resulting in fatalities, injuries, and property damage. (49 CFR 385.3, October 1, 2001)

“Safety Ratings” means:

A satisfactory safety rating means that a motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standards prescribed in 49 CFR 385.5. Safety management controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier.

A conditional safety rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in occurrences listed in 49 CFR 385.5 (a) through (k).

An unsatisfactory safety rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that has resulted in occurrences listed in 49 CFR 385.5 (a) through (k).

An unrated carrier means that a safety rating has not been assigned to the motor carrier by the FMCSA. (49 CFR 385.3, October 1, 2001)

(Source: Amended at 26 Ill. Reg. 8966, effective June 5, 2002)

Section 385.1020 Unsatisfactory Rated Motor Carriers

- a) Upon written notification from the FMCSA to a motor carrier that it has received a final “unsatisfactory” rating by the FMCSA under 49 CFR 385, that motor carrier shall not operate a commercial motor vehicle listed in Section 385.1000 in Illinois.
- b) When a carrier subject to the prohibition in Section 385.1000 is known to operate a commercial motor vehicle in Illinois, the Department will issue an order placing those operations out-of-service in Illinois. The order will be hand delivered to an Illinois office, if known to the Department, of the carrier and a copy served by certified mail return receipt requested on the carrier.
- c) Any motor carrier placed out-of-service by the Department pursuant to subsection (b) of this Section may appeal that order to the Secretary, who will investigate the matter.
 - 1) Appeals shall be filed in writing with the Secretary no more than 20 days after the out-of-service order is served by hand delivery or certified mail return receipt requested on the carrier, whichever date is earlier. The appeal shall contain the reason for the appeal and a contact person’s name, address and telephone number.
 - 2) The Secretary’s designee will appoint a Department employee to investigate every appeal submitted to the Department in accordance with this Part. The operations declared out-of-service shall remain out-of-service in Illinois during the duration of the investigation.
 - 3) The Department’s investigation will be concluded within 30 days after the receipt of the appeal by the Department.
 - 4) Within the 30 day investigative period, the Secretary will issue written notification to the petitioner indicating the Department’s determination as to the correctness or incorrectness of the out-of-service order remaining in effect.
 - 5) The Department’s written notification, served by certified mail return receipt requested, will include a statement of the facts relied upon and issues decided by the Department in making its determination. The Department’s determination is considered administratively final.

- d) Any motor carrier whose safety rating of “unsatisfactory” has become final under 49 CFR 385, that has been ordered out-of-service in Illinois by the Department and that has exhausted the appeal procedure or not timely filed an appeal under subsection (c) of this Section and that then willfully operates a commercial motor vehicle in Illinois described in Section 385.1000 will be referred by the Department to a State’s Attorney or the Attorney General for prosecution of a Class 3 felony.
- e) Any person who willfully permits a motor carrier to operate a commercial motor vehicle in Illinois as described in subsection (d) of this Section will be referred by the Department to a State’s Attorney or Attorney General for prosecution of a Class 3 felony.
- f) The Department will rescind its out-of-service order issued under this Section within five business days after being notified that the FMCSA has rescinded the “unsatisfactory” rating or will not assign a final “unsatisfactory” rating to the motor carrier. After verification of the rescission from the FMCSA, written notification of the rescission will be sent within that time period by certified mail to the motor carrier.

(Source: Amended at 26 Ill. Reg. 8966, effective June 5, 2002)

TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER d: MOTOR CARRIER SAFETY REGULATIONS

PART 386
PROCEDURES AND ENFORCEMENT

SUBPART A: GENERAL PROVISIONS

Section	
386.1000	Scope
386.1010	Definitions
386.1020	Service
386.1030	Subpoenas

SUBPART B: ENFORCEMENT

Section	
386.1040	Responsibility for Enforcement
386.1050	Investigations
386.1060	Inspection of Records and Motor Vehicles
386.1070	Out of Service
386.1080	Record of Inspection
386.1090	Warning Letter
386.1110	Maximum Penalties
386.1120	Commencement of Civil Penalty Proceeding
386.1130	Reply
386.1140	Payment of Penalty
386.1150	Request for Hearing
386.1160	Hearing
386.1170	Presiding Officer's Decision
386.1180	Assessment Considerations
386.1190	Appeal
386.1200	Willful Violations
386.1210	Failure to Pay Civil Penalty

SUBPART C: PUBLIC UTILITY EXEMPTIONS

Section	
386.1300	Purpose and Scope
386.1310	Exemptions for a Public Utility
386.1320	Initial Exemptions: Application and Review

- 386.1330 Renewals
- 386.1340 Expiration and Termination of an Exemption
- 386.1350 Appeal

AUTHORITY: Implementing, and authorized by Sections 18b-102 and 18b-105 of, the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch.18B] and Section 3-704(b) of the Illinois Vehicle Code [625 ILCS 5/3-704(b)]. (See P.A. 92-0437, effective August 17, 2001.)

SOURCE: Adopted at 14 Ill. Reg. 15542, effective September 10, 1990; amended at 18 Ill. Reg. 778, effective January 11, 1994; amended at 19 Ill. Reg. 13073, effective August 30, 1995; amended at 23 Ill. Reg. 5128, effective March 31, 1999; amended at 24 Ill. Reg. 1980, effective January 19, 2000; amended at 25 Ill. Reg. 2121, effective January 17, 2001; amended at 26 Ill. Reg. 8972, effective June 5, 2002.

SUBPART A: GENERAL PROVISIONS

Section 386.1000 Scope

This Part defines certain terms and prescribes procedures that are applicable to each proceeding described in this Part that are utilized by the Department in carrying out its duties under the Illinois Motor Carrier Safety Law (the Law) [625 ILCS 5/18b-100 through 111] and describes the various enforcement authorities exercised by the Department and the associated sanctions, prescribes the procedures governing the exercise of those authorities and the imposing of those sanctions.

(Source: Amended at 19 Ill. Reg. 13073, effective August 30, 1995)

Section 386.1010 Definitions

As used in this Part:

“Applicant” means a public utility that submits an application.

"Department" means the Illinois Department of Transportation.

"Director" means the Director of the Division of Traffic Safety whose office is located at:

Illinois Department of Transportation
P.O. Box 19212
3215 Executive Park Drive
Springfield, Illinois 62794-9212

“Division” means the Division of Traffic Safety of the Illinois Department of Transportation.

“Exemption” means a document issued under the authority of the Division that authorizes a person to perform a function that is not otherwise authorized under the Illinois Motor Carrier Safety Regulations.

"Illinois State Police" means any individual officer of the Illinois State Police.

"Material(ly)" means anything which relates to any substantive issue that is of consequence to the determination of a proceeding.

“Officer” means an employee of the Illinois Department of Transportation.

“Public Utility” means a firm lawfully licensed and engaged in any of the following: the transmission of telegraphic or telephonic messages; the production, storage, transmission, distribution, sale, delivery, or furnishing of heat, cold, light, power, electricity, gas, or water; or the installation or repair of facilities for any of these activities.

"Relevant" means having any tendency to make the existence of any fact that is of consequence to the determination of the proceeding more probable or less probable than it would be without that information.

"Respondent" means a person upon whom the Department has served a Notice of Intent to Assess Civil Monetary Penalty or a Notice of Probable Violation.

"Secretary" means the Secretary of the Illinois Department of Transportation.

"Undue Delay" means delay which is unwarranted, unjustified, or improper.

(Source: Amended at 24 Ill. Reg. 1980, effective January 19, 2000)

Section 386.1020 Service

- a) Each order, notice, or warning letter required to be served under this Part shall be served personally or by certified mail.
- b) Service upon a person's authorized representative constitutes service upon that person.

- c) Service by certified mail is complete upon mailing. An official United States Postal Service receipt from the certified mailing constitutes prima facie evidence of service.

Section 386.1030 Subpoenas

- a) The presiding officer, designated to preside over a hearing convened in accordance with Section 386.1150(b), *shall issue subpoenas* on his own initiative, or upon the request of any person participating in that proceeding. The presiding officer *shall issue subpoenas* on his own initiative when the presiding officer believes that the *production of relevant documents* or the appearance of a particular witness shall materially advance the proceeding and those documents or witnesses have not been subpoenaed by any other party to the proceeding. (Section 18b-102(b) of the Law)
- b) A subpoena may require the attendance of a witness, or the production of relevant documentary or other tangible evidence in the possession or under the control of the person served, or both.
- c) Service of a subpoena upon the person named therein shall be made by:
 - 1) delivering a copy of the subpoena to such person;
 - 2) delivering a copy of a subpoena to a natural person by handing it to that person, leaving it at his or her office with the person in charge, leaving it at his dwelling place or usual place of abode with some competent adult person of legal age who resides therein; or
 - 3) mailing it by certified mail to the person at the person's last known address.
- d) When the person to be served is not a natural person, delivery of a copy of the subpoena shall be effected by:
 - 1) handing it to a registered agent for service, or to any officer, director, or agent in charge of any office of the person; or
 - 2) mailing it by certified mail to that representative at his last known address.

- e) The original subpoena bearing a certificate of service shall be filed with the Department official having responsibility for the proceeding in connection with which the subpoena was issued.
- f) Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 10 days after the date of service of such subpoena, send a written request to the presiding officer who issued the subpoena, to quash or modify the subpoena. The written request shall contain a brief statement of the reasons relied upon in support of the action sought therein. The presiding officer (as designated under Section 386.1160(a)) shall:
 - 1) deny the written request;
 - 2) quash or modify the subpoena if it is unreasonable, immaterial, irrelevant, or to prevent delay, expense, harassment or oppression; or
 - 3) condition denial of the written request to quash or modify the subpoena upon the satisfaction of certain just and reasonable requirements to avoid delay, expense, harassment or oppression. The denial may be summary.
- g) If there is a refusal to obey a subpoena served upon any person under the provisions of this Section, the Department may request the Attorney General to seek the aid of the Circuit Court or any court of competent jurisdiction in which the person is found, to compel that person, after notice, to appear and give testimony, or to appear and produce the subpoenaed documents before the Department, or both.

Section 386.1040 Responsibility for Enforcement

Responsibility for enforcement of this Part is exercised by:

- a) *The Illinois Department of Transportation; and*
- b) *The Illinois State Police (the State Police) (Section 18b-102 of the Law).*

Section 386.1050 Investigations

- a) General

The Department may conduct investigations (Section 18b-102(b) of the Law) relating to compliance by any person with any provision of these Motor Carrier

Safety Regulations (MCSR) (92 Ill. Adm. Code 386, 390, 391, 392, 393, 395, 396, and 397) and any order issued thereunder, or any court decree relating thereto.

b) Confidentiality

Information received in an investigation under this Section, including the identity of the person investigated and any other person who provides information during the investigation, shall remain confidential, but only to the extent that disclosure would:

- 1) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement agency;
- 2) interfere with pending administrative enforcement proceedings conducted by the Department;
- 3) deprive a person of a fair trial or an impartial hearing;
- 4) unavoidably disclose the identity of a confidential source or confidential information furnished only by the confidential source;
- 5) disclose unique or specialized investigative techniques other than those generally used and known;
- 6) endanger the life or physical safety of law enforcement personnel or any other person; or
- 7) obstruct an ongoing criminal investigation.

Section 386.1060 Inspection of Records and Motor Vehicles

- a) *Authorized representatives of the Department and the State Police, upon presenting credentials, may enter a motor carrier's established place of business without undue delay, inspect and examine records of motor carriers required to be maintained under the MCSR to determine compliance with the MCSR and may enter a motor carrier's established place of business to inspect and examine the motor vehicles of motor carriers subject to these MCSR to determine compliance with the MCSR. (Section 18b-102(c) of the Law)*
- b) The motor carrier or a representative of the motor carrier shall be entitled to be present during an inspection conducted pursuant to this Section, however, the

presence of the motor carrier or an authorized representative of the motor carrier is not a condition precedent to such an inspection.

- c) Inspection conducted, pursuant to this Section, may be initiated at any time that business is being conducted or work is being performed, whether or not open to the public or when the motor carrier or a representative of the motor carrier other than a custodian or watchman, is present. The fact that a motor carrier or representative of the motor carrier leaves the premises after an inspection has been initiated shall not require the termination of the inspection.
- d) Any inspection conducted pursuant to this Section shall not continue for more than 24 clock hours after initiation, without the consent of the company, but in no event shall the inspection continue for more than 72 hours after initiation.
- e) In the event information comes to the attention of the individuals conducting an inspection that may give rise to the necessity of obtaining a search warrant, and in the event steps are initiated for the procurement of a search warrant, the individuals conducting such inspection may take all necessary steps to secure the premises under inspection until the warrant application is acted upon by a judicial officer.
- f) No more than three inspections of a motor carrier shall be conducted pursuant to this Section within any six month period except pursuant to a search warrant.
- g) Notwithstanding this limitation, nothing in this Section shall be construed to limit the authority of the State Police or the Department to respond to public complaints of violations of the MCSR or to inspect a commercial motor vehicle, and records thereon, operating on the highways of Illinois. For the purpose of this Section, a public complaint is one in which the complainant identifies himself or herself and sets forth, in writing, the specific basis for their complaint against the motor carrier.
- h) Nothing in this Section shall be construed to limit the authority of individuals, pursuant to this Section, to conduct searches of motor carriers pursuant to an issued and authorized search warrant.
- i) Whenever any motor carrier who, having been informed *by a person authorized to make inspections and examine records* under this Section that that person desires to *inspect records and the motor carrier's motor vehicles* as authorized by this Section, refuses either to produce for that person records required to be kept by the MCSR or to permit such *authorized person to make an inspection of motor vehicles in accordance with this Section*, and having been advised of his

right to refuse to produce records or to permit an inspection of motor vehicles at the time of inspection, the inspection shall be terminated or the inspection confined to areas concerning which no objection is raised. The representative shall endeavor to ascertain the reason for such refusal and shall immediately report the matter to the Director. If the Director desires to have an inspection and examination conducted, the Director may refer the matter to the Department's Office of Chief Counsel to take appropriate action, including issuance of a search warrant, if necessary. (Section 18b-102(c) of the Law)

Section 386.1070 Out of Service

- a) Whenever it is determined that a motor vehicle is in such a condition as to likely cause an accident or a breakdown of the vehicle, the Illinois State Police shall order a vehicle or employee operating such vehicle out of service. On making such an order, no restrictions shall be imposed on the employee beyond that required to abate the hazard.
- b) Upon the issuance of an order under subsection (a), the driver or employee shall comply immediately with such order.
- c) On placing a vehicle out of service, the Illinois State Police shall prevent the further movement of the vehicle and shall tag the vehicle so as to place the vehicle out of service until such time as the imminent danger observed is abated.
- d) Whenever the State Police stops a vehicle and the driver or operator of the vehicle is able to properly abate the existing hazard, the vehicle shall be permitted to continue in service.

Section 386.1080 Record of Inspection

When any authorized representative of the Department, or the Illinois State Police, responsible for enforcing the MCSR pursuant to Section 386.1040, has inspected driver records or a motor vehicle, the inspector shall provide to the driver or other representative of the carrier, a record of the inspection.

Section 386.1090 Warning Letter

- a) When the Department has reason to believe that a person is engaging in conduct which involves a violation of any provision of the MCSR, the Department may issue a warning letter which shall:

- 1) advise the person of the time, place and circumstances of the apparent violation;
 - 2) advise the person that a subsequent inspection may be conducted to ascertain whether the violation has been corrected; and
 - 3) warn the person not to repeat the violation in the future.
- b) The warning letter shall be served in the manner prescribed in Section 386.1020.

Section 386.1110 Maximum Penalties

A person who commits an act that is a violation of any of the MCSR is liable for a civil penalty of not more than \$5,000 for each violation. When the violation is a continuing one, each day of the violation constitutes a separate offense.

Section 386.1120 Commencement of Civil Penalty Proceeding

- a) When the Department has reason to believe that a person has committed an act which is a violation of any provision of the MCSR or a settlement agreement, and having considered the nature, circumstances, extent and gravity of the violation, and with respect to a person believed to have committed such a violation, the degree of culpability and history of prior offenses or warning letters, the Department, by the Director or his authorized representative, shall begin a civil penalty proceeding by serving a Notice of Intent to Assess Civil Monetary Penalty, in accordance with Section 386.1020, on a person charging that person with having committed an act which is a violation of one or more provisions of these regulations or a settlement agreement.
- b) A Notice of Intent to Assess Civil Monetary Penalty issued under this Section shall include:
 - 1) notice of the provision(s) of the MCSR or settlement agreement which the respondent is believed to have violated;
 - 2) a brief description of the manner in which the respondent is believed to have violated the MCSR or settlement agreement;
 - 3) notice of the maximum amount of civil penalty for which the respondent may be liable;

- 4) notice of the amount of the civil penalty sought to be assessed by the Department;
 - 5) a description of the manner in which the respondent shall make payment in accordance with Section 386.1140 of any money to the State;
 - 6) a statement that the respondent may request a conference with the Department, by verbal or written request to the Director, to review and discuss the alleged violation and civil penalty, and of the procedures for requesting a conference;
 - 7) a statement that if a settlement cannot be reached within 90 days, a Notice of Probable Violation will be served upon the respondent, and *the respondent will have an opportunity for a hearing* as provided by Section 18b-107(b) of the Law and Section 386.1160;
 - 8) a statement that if the respondent does not reply to the Notice of Intent to Assess Civil Monetary Penalty within 30 days after its service upon the respondent, the failure of the respondent to reply constitutes a waiver of its right to appear and contest the allegations, without further notice to the respondent, and authorizes the Secretary, without further notice to the respondent, to find the facts to be as alleged in the Notice of Intent to Assess Civil Monetary Penalty and order the assessment of the civil penalty stated in the Notice; and
 - 9) a statement that respondent's failure to pay a civil monetary penalty as ordered by the Secretary may result in revocation or suspension by the Illinois Secretary of State of the registration of vehicles owned by respondent or, regardless of ownership, were the subject of violations by respondent of the IMCSR, pursuant to 625 ILCS 5/3-704(b).
- c) In the event that the Department and the respondent do not enter a settlement agreement following service of a Notice of Intent to Assess Civil Monetary Penalty, the Department by the Director shall serve a Notice of Probable Violation on the respondent.
- d) A Notice of Probable Violation issued under this Section includes:
- 1) a statement of the provision(s) of the MCSR or of a settlement agreement which the respondent is believed to have violated;

- 2) a statement of the factual allegations upon which the proposed civil penalty is being sought;
 - 3) notice of the maximum amount of civil penalty for which the respondent may be liable;
 - 4) notice of the amount of the civil penalty sought to be assessed by the Department;
 - 5) a description of the manner in which the respondent shall make payment of any money to the State in accordance with Section 386.1140;
 - 6) a statement of respondent's right to request a hearing and the procedures for requesting a hearing in accordance with Section 386.1150; and
 - 7) a statement of respondent's right to appear at the hearing and to present relevant written or oral explanations, information and materials in answer to the allegations or in mitigation of the penalty.
- e) A settlement of a civil penalty proceeding may be effectuated at any time upon agreement of the parties, shall be reduced to writing by the Department and signed by the parties. Terms of the settlement may include a reduction in the amount of the proposed civil penalty, and may include training and procedural requirements agreed upon by the respondent and Department. Training and procedural requirements may be agreed upon to increase awareness of and compliance with the MCSR.

(Source: Amended at 26 Ill. Reg. 8972, effective June 5, 2002)

Section 386.1130 Reply

- a) Within 30 days of the service of a Notice of Probable Violation issued under Section 386.1020, the respondent may:
 - 1) pay the preliminary assessment as provided in Section 386.1140 and thereby close the case; or
 - 2) request a hearing as provided in Section 390.1150.
- b) The Director shall extend the 30-day period, for a maximum of 30 days, upon a request to do so by the respondent within the 30-day period.

- c) Failure of the respondent to reply by taking one of the two actions described in subsection (a) within the period provided constitutes a waiver of his right to appear and contest the allegations, and authorizes the Secretary, without further notice to the respondent, to find the facts to be as alleged in the Notice of Probable Violation and order the assessment of an appropriate civil penalty. The assessment shall be the same as the assessment stated in the Notice when the respondent fails to reply.
- d) An order entered against a respondent who fails to reply shall be vacated by the Secretary upon good cause shown in a written motion filed within 30 days of service of the order. A motion to vacate must be accompanied by a request for hearing meeting the requirements of Section 386.1150. No further extension of this time for filing shall be granted.

Section 386.1140 Payment of Penalty

- a) Payment of a civil penalty should be made by certified check or money order payable to the "Treasurer of the State of Illinois" and sent to:

Director, Division of Traffic Safety
Illinois Department of Transportation
P. O. Box 19212
Springfield, Illinois 62794-9212.
- b) At any time after an order assessing a civil penalty is referred to the Attorney General for collection, the respondent may offer a compromise, for example, by offering a specific amount or a payment plan to the Director who, with the consent of the Attorney General, may accept or reject it. If it is accepted, the respondent is notified in writing by the Director that the acceptance is in full settlement of the civil penalty for the violation.

Source: Amended at 18 Ill. Reg. 778, effective January 11, 1994)

Section 386.1150 Request for Hearing

- a) If a respondent elects to request a hearing, he shall submit a written request to the Director. The request shall:
 - 1) state the name and address of the respondent and of the person signing the request, if different from the respondent;
 - 2) state with respect to each allegation whether it is admitted or denied; and

- 3) state the issues to be raised by the respondent at the hearing.
- b) After receiving a request for hearing which complies with the requirements of subsection (a), the Director shall request the Secretary to appoint a presiding officer. The designated presiding officer schedules a hearing for the earliest practicable date.
- c) The presiding officer shall grant extensions of the time of the commencement of the hearing for good cause shown.

Section 386.1160 Hearing

- a) When a hearing is requested under Section 386.1150 the Secretary shall appoint a presiding officer to convene and preside over the hearing. To the extent practicable, the hearing will be held near the place where the alleged violation occurred or at a place convenient to the respondent, provided that all such hearings shall be in Illinois. Testimony by witness shall be given under oath and the hearing shall be recorded verbatim.
- b) The presiding officer may:
 - 1) administer oaths and affirmations;
 - 2) issue subpoenas as provided by Section 386.1030;
 - 3) adopt procedures, including the submission of evidence in written form;
 - 4) take or cause depositions to be taken;
 - 5) rule on offers of proof and receive relevant evidence;
 - 6) examine witnesses at the hearing;
 - 7) convene, recess, reconvene, adjourn and otherwise regulate the course of the hearing;
 - 8) hold conferences for settlement, simplification of the issues or any other proper purpose; and
 - 9) take any other action authorized by or consistent with the provisions of this Part pertaining to civil penalties and which may expedite the hearing or aid in the disposition of an issue raised therein.
- c) The Director, or his representative, has the burden of proving the facts alleged in the Notice of Probable Violation as may be necessary to fully inform the presiding officer as to the matter concerned.
- d) The respondent may appear and be heard on his own behalf or through counsel of his choice. The respondent or his counsel may offer relevant information

including testimony which he believes should be considered in defense of the allegations or which may bear on the penalty to be assessed and conduct such cross-examination as may be required for a full disclosure of the facts.

Section 386.1170 Presiding Officer's Decision

- a) After consideration of the evidence of record, the presiding officer may dismiss the Notice of Probable Violation in whole or in part. If he does not dismiss it in whole, he will issue and serve on the respondent an order assessing a civil penalty. The order will include a statement of findings and conclusions as well as the reasons therefor on all material issues of fact, law, and discretion.
- b) If, within 20 days after service of an order assessing a civil penalty, the respondent does not pay the civil penalty or file an appeal as provided in Section 386.1190, the case shall be referred to the Illinois Attorney General with a request that an action to collect the penalty be brought in the appropriate Circuit Court.

Section 386.1180 Assessment Considerations

- a) *In assessing a civil penalty under the provisions of this Part, the assessment is made only after considering:*
 - 1) *the nature and circumstances of the violation;*
 - 2) *the extent and gravity of the violation;*
 - 3) *the degree of the respondent's culpability;*
 - 4) *the respondent's history of prior offenses;*
 - 5) *the respondent's ability to pay; and*
 - 6) *the effect on the respondent's ability to continue in business.* (Section 18b-107(b) of the Law)
- b) The manner in which these factors are considered by the Department is that the facts gathered by the Department, as well as the facts and arguments obtained from the respondent during the informal conference process, are weighed and considered by the Department in determining or revising the assessed penalty in light of the factors stated in subsections (a)(1) through (6). The respondent may

request a formal hearing, in accordance with Section 386.1150, to present evidence to the presiding officer, who shall weigh all of the relevant evidence presented in light of the factors stated in this Section.

Section 386.1190 Appeal

- a) Orders of dismissal and orders assessing civil penalties may be appealed to the Secretary. An appeal must be filed within 20 days of service of the presiding officer's order.
- b) The decision of the Secretary on appeal shall be made on the record of the hearing, including all pleadings and the decision of the officer who presided at the hearing. No new or additional evidence shall be considered by the Secretary without a positive showing by the party presenting such evidence that the evidence was not available or, through due diligence, could not have been made available at the hearing. At the discretion of the Secretary, for clarification purposes, and upon reasonable notice of the parties, oral argument may be had on appeal. Any party requesting oral argument must detail in his petition for appeal the reasons for the request for argument.
- c) If the Secretary affirms the assessment and the respondent does not pay the civil penalty within 35 days after service of the Secretary's decision on appeal and no complaint for administrative review has been filed, the case shall be referred to the Attorney General with a request that an action to collect the penalty be brought in the appropriate Circuit Court.
- d) Petition for appeal shall detail the assailed findings and be confined to factual and legal issues which are essential to the ultimate and just determination of the proceeding. Petitions shall not exceed 10 pages in length, excluding a separate preface and summary of argument which shall not exceed three pages. A reply to the petition, if any, shall be filed within 20 days of receipt of the petition for appeal and shall meet requirements as to length and format.
- e) The filing of the petition shall stay the effect of the prior decision, order or requirement pending the determination of the appeal.

Section 386.1200 Willful Violations

Whenever it appears to the Department that a person has engaged or is engaged in any act or practice constituting a willful violation of any provision of the MCSR or of any settlement agreement or order issued thereunder, the Secretary shall request the Illinois Attorney

General or State's Attorney to bring an action in the appropriate circuit court for such relief as is authorized by the law. (Section 18b-108 of the Law)

Section 386.1210 Failure to Pay Civil Penalty

- a) Failure of the respondent to pay all or a portion of a civil penalty under Section 386.1120(b)(8), Section 386.1130(c) or Section 386.1170 or a settlement agreement under Section 386.1120(e) or Section 386.1140(b) will result in the Department, without further notice to respondent, notifying the Illinois Secretary of State in writing or by electronic communication, no sooner than 30 days and no more than 40 days after that failure to pay, that respondent has not paid a civil penalty or a settlement agreement arising from a violation of the IMCSR. The Illinois Secretary of State may then suspend or revoke the registration of vehicles that are owned by the respondent or, regardless of ownership, that were the subject of violations of the IMCSR for which a civil penalty or settlement agreement remains unpaid.
- b) An order to pay a civil penalty or a settlement agreement will include a provision that failure to pay all or a portion of the civil monetary penalty or settlement agreement will result in the Department, without further notice to respondent, notifying the Illinois Secretary of State that the respondent has not paid a civil penalty or a settlement agreement arising from a violation of the IMCSR and that the Illinois Secretary of State may then suspend or revoke the registration of vehicles that are owned by respondent or, regardless of ownership, that were the subject of violations of the IMCSR for which a civil penalty or settlement agreement remains unpaid.
- c) Within three business days after the respondent paying a civil penalty or settlement agreement that was the subject of a notice to the Illinois Secretary of State under subsection (a) of this Section, the Department will notify the Secretary of State that the civil penalty or settlement agreement has been paid.

(Source: Added at 26 Ill. Reg. 8972, effective June 5, 2002)

SUBPART C: PUBLIC UTILITY EXEMPTIONS

Section 386.1300 Purpose and Scope

This Subpart C prescribes procedures by which a public utility, as defined in Section 386.1010 and that is not subject to the federal Motor Carrier Safety Regulations, may obtain administrative relief from the Illinois Motor Carrier Safety Regulations (IMCSR) in the form of an exemption. Exemptions provided for in this Subpart C will be granted only when they

insure levels of safety consistent with the public interest, with the Illinois Motor Carrier Safety Regulations, and with the tolerance guidelines established in 49 CFR 350, Appendix C.

(Source: Added at 24 Ill. Reg. 1980, effective January 19, 2000)

Section 386.1310 Exemptions for a Public Utility

- a) Only those intrastate public utility commercial motor vehicles and their drivers that meet the requirements of this Subpart C are eligible for an exemption.
- b) Upon application, public utility commercial motor vehicles operated solely in intrastate commerce as defined in 92 Ill. Adm. Code 390.1020 with a gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR) of 26,000 pounds or less and that are not either designed to transport more than 15 passengers, including the driver, or used to transport hazardous materials in an amount requiring placarding, will be considered for an exemption from the Illinois Motor Carrier Safety Regulations with the exception of 92 Ill. Adm. Code 391 - Qualification of Drivers.
- c) Upon application, drivers of solely intrastate public utility commercial motor vehicles having a GVWR or GCWR greater than 26,000 pounds will be considered for an exemption from some provisions of 92 Ill. Adm. Code 395 - Hours of Service of Drivers. The following subsections establish the requirements in lieu of 92 Ill. Adm. Code 395 for those drivers:
 - 1) Expansion of the 10 hour driving rule limit to a 12 hour driving rule limit;
 - 2) Increase the combination of driving time and on-duty but not driving time from 15 hours to 16 hours; and
 - 3) Increase the current 60 hour rule to 70 hours in seven consecutive days and increase the 70 hour rule to 80 hours in eight consecutive days.

(Source: Added at 24 Ill. Reg. 1980, effective January 19, 2000)

Section 386.1320 Initial Exemptions: Application and Review

- a) A public utility may apply to the Director for an exemption from the IMCSR as described in Section 386.1310(b) and (c).
- b) Each application filed under this Section for an exemption must:

- 1) Be submitted to:

Director, Division of Traffic Safety
Illinois Department of Transportation
3215 Executive Park Drive, P. O. Box 19212
Springfield, Illinois 62794-9212;
- 2) Reference the exemption being sought under Section 386.1310;
- 3) State the name, address, and telephone number of the applicant;
- 4) Certify that the vehicles for which an exemption is sought are used for the delivery of essential utility services to the public;
- 5) Certify that the public utility systematically inspects, repairs and maintains all commercial motor vehicles operating under the exemption as incorporated by reference in 92 Ill. Adm. Code 396. Parts and accessories shall be in safe and proper operating condition at all times. This Subpart C does not provide for exemption from the semi-annual inspection required by the Illinois Vehicle Inspection Law [625 ILCS 5/13-101 and 13-109];
- 6) For vehicles controlled by the public utility for 30 consecutive days or more, the utility must maintain or cause to be maintained records as incorporated by reference in 92 Ill. Adm. Code 396. If requested, the public utility must make these records available for inspection by an officer of the Department;
- 7) Certify that the firm's drivers of the commercial motor vehicles fully comply with the driver qualification standards outlined in 92 Ill. Adm. Code 391;
- 8) Submit the number of commercial motor vehicles owned or leased by the firm having a GVWR or GCWR of 26,000 pounds or less for which an exemption is requested;
- 9) Submit the number of commercial motor vehicles owned or leased by the firm having a GVWR or GCWR greater than 26,000 pounds for which hours of service relief is requested;
- 10) Make available for inspection by an officer of the Department comprehensive fleet accident information for the previous two years and

annual total fleet mileage (See 92 Ill. Adm. Code 390.1020 for definition of accident.);

- 11) Identify any increased risks that are likely to result if an exemption is granted, and specify the safety control measures that the applicant considers necessary or appropriate to compensate for those increased risks;
 - 12) State the reasons why the applicant believes the requested exemption, including any safety control measures specified by the applicant, will achieve a level of safety that:
 - A) Is at least equal to that specified in the IMCSR from which the exemption is sought; or
 - B) If the IMCSR do not contain a specified level of safety, will be consistent with the public interest and will protect against the risks of life and property;
 - 13) Certify that the transportation described in the requested exemption is not governed by the federal Motor Carrier Safety Regulations.
- c) If the applicant seeks to have the application processed on a priority basis, the applicant must set forth the supporting facts and reasons. If the Director, or his/her designated officer, determines that the request warrants priority consideration because of an emergency as defined in 92 Ill. Adm. Code 390.1020, the application will be processed as timely as practicable.
 - d) To permit timely consideration, an application should be submitted at least 60 days before the requested effective date.
 - e) If the applicant states that the information contained in the application constitutes trade secrets or commercial or financial information, the applicant must include a statement as to why the information is privileged or confidential.
 - f) Upon receipt by the Division, the application will be date and time-stamped. The Division will determine whether the application is complete and in conformance with this Subpart C. Incomplete applications will be returned along with a letter containing the reasons the application is incomplete. In that case, the applicant will be requested to supply additional information or documentation. An applicant that does not supply such additional information or documentation will not be approved.

- g) When the Division determines that the application is complete, an on-site visit will be conducted within 60 calendar days after receipt of that determination to verify that, for example, driver qualification requirements are being met and that the required vehicle repair, inspection and maintenance records are being maintained.
- h) A decision regarding the granting of an exemption will be based upon the application and record assembled by the Division.
- i) A letter of approval will be mailed by the Director, or his/her designated officer, to the applicant granting the exemption. The exemption is effective for a two year period from the date of the approval letter.
- j) A letter of denial containing a statement of the reasons why the applicant has not been granted an exemption and the provisions of Subpart C that support the denial will be mailed to applicants denied exemptions. Applicants denied an exemption may:
 - 1) Correct deficiencies listed in the letter of denial and reapply if the application can be modified to meet the Department's objections as specified in the letter of denial; or
 - 2) Appeal the decision (see Section 386.1350 for appeal procedures).
- k) At any time there is a material change in the application or in any information relevant to the exemption, the applicant shall promptly notify the Division. Failure to notify the Division will result in termination of the exemption.

(Source: Added at 24 Ill. Reg. 1980, effective January 19, 2000)

Section 386.1330 Renewals

- a) Each application for the renewal of an exemption issued under this Subpart C must be filed prior to the expiration of the exemption. To permit timely consideration, an application for renewal should be submitted at least 60 calendar days before the expiration of the exemption. An exemption that is allowed to lapse will not be considered a renewal. Initial application procedures as outlined in Section 386.1320 will apply in the case of lapsed exemptions. The exemption of an applicant that has timely filed an application for renewal will continue pending the consideration of the renewal.

- b) Each application for the renewal of an exemption issued under this Subpart C must:
- 1) Be submitted to:

Director, Division of Traffic Safety
Illinois Department of Transportation
3215 Executive Park Drive, P. O. Box 19212
Springfield, Illinois 62794-9212;
 - 2) Identify the exemption for which a renewal is requested;
 - 3) State the name, address, and telephone number of the applicant;
 - 4) Include:
 - A) A certification by the applicant that the information submitted in the original application, or as may have been updated by any subsequent application for renewal, is accurate and correct, or
 - B) Such amendments to the previously submitted information as is necessary to update it and assure its accuracy and correctness;
 - 5) Include a statement describing all accident experience that has occurred in connection with the exemption since its issuance or most recent renewal, or, if no accidents have occurred, a certification to that effect. (See 92 Ill. Adm. Code 390.1020 for the definition of accident.)
- c) Upon receipt by the Division, the Division will date and time-stamp the application for renewal. The Division will determine whether the application is complete and in conformance with this Subpart C. The applicant will be requested to supply missing information or attachments.
- d) When the Division determines that the application for renewal is complete, an on-site visit will be conducted within 60 calendar days after the determination to verify that, for example, driver qualification requirements are being met and that the required vehicle repair, inspection and maintenance records are being maintained.
- e) A decision regarding the renewal of an exemption will be based upon the application and record assembled by the Division. Exemptions will not be

renewed unless the record establishes that the applicant meets the requirements of this Subpart C.

- f) A letter of approval will be mailed by the Director granting the renewal of the exemption. The renewal is effective for a two year period from the date of the approval letter.
- g) A letter of denial containing a statement of the reasons why the exemption has not been renewed and the provisions of Subpart C that support the denial will be mailed to an applicant denied renewal.
- h) Applicants denied a renewal may correct deficiencies listed in the letter of denial and reapply if the application for renewal can be modified to meet the Department's objections as specified in the letter of denial, or applicants may appeal the decision as provided for in Section 386.1350 of this Subpart C.
- i) At any time there is a material change in the application for renewal or in any information relevant to the exemption, the applicant shall promptly notify the Division. Failure to notify the Division will result in termination of the exemption.

(Source: Added at 24 Ill. Reg. 1980, effective January 19, 2000)

Section 386.1340 Expiration and Termination of an Exemption

- a) An exemption and any renewal expires according to its terms but not later than two years after the date of issuance unless terminated sooner pursuant to subsection (b) of this Section.
- b) The Director, or his/her designated officer, may terminate an exemption if the Director, or his/her designated officer, obtains any information evidencing that:
 - 1) Any activity under the exemption is not being performed in accordance with the terms of the exemption or this Subpart C; or
 - 2) On the basis of information not available at the time the exemption was granted, a termination of the exemption is necessary to adequately protect against risks to life and property; or
 - 3) The exemption is no longer consistent with the public interest; or

- 4) The exemption is no longer necessary because of an amendment to the Illinois Motor Carrier Safety Regulations; or
 - 5) The exemption was granted on the basis of false, fraudulent, or misleading representations or information by the applicant in an application.
- c) Unless the Director, or his/her designated officer, believes that immediate termination is necessary to abate the risk of an imminent hazard, the Director, or his/her designated officer, will notify the firm in writing within 30 calendar days of the Director's, or his/her designated officer's, intent to terminate and the reasons for the termination.
- d) A letter of termination will be sent to the firm by certified mail, return receipt requested. The letter, mailed by the Division, will include:
- 1) a statement of the reasons for termination of the exemption;
 - 2) the provisions of this Subpart C and the IMCSR that support termination; and
 - 3) a statement that the letter of termination is final unless an appeal is filed in accordance with Section 386.1350.
- e) The filing of an appeal will stay the effect of the notice of termination pending determination of the review of the appeal.
- f) If a firm does not file an appeal, it may reapply for an exemption one calendar year after the date of the letter of termination.

(Source: Added at 24 Ill. Reg. 1980, effective January 19, 2000)

Section 386.1350 Appeal

- a) Any applicant for an exemption or renewal of an exemption believing that it has wrongly been denied or a firm holding an exemption that has been terminated may, within 30 calendar days after receiving the written letter advising it of that decision from the Division, file a written appeal with the Secretary stating areas of disagreement and providing evidence, if possible, to rebut the Department's decision.
- b) This appeal shall be directed to:

Secretary
Illinois Department of Transportation
2300 South Dirksen Parkway, Room 300
Springfield, Illinois 62764

- c) The Secretary will affirm or revise, in writing, the initial determination within 30 calendar days after having received the appeal. Once the Secretary has made a final decision, that decision goes into effect immediately.
- d) The firm will be notified in writing of the Secretary's decision.

(Source: Added at 24 Ill. Reg. 1980, effective January 19, 2000)

TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER d: MOTOR CARRIER SAFETY REGULATIONS

PART 390
MOTOR CARRIER SAFETY REGULATIONS: GENERAL

SUBPART A: GENERAL APPLICABILITY AND DEFINITIONS

Section	
390.1000	Purpose
390.1010	General Applicability
390.1020	Definitions
390.1030	Rules of Construction

SUBPART B: GENERAL REQUIREMENTS AND INFORMATION

Section	
390.2000	Incorporation by Reference

AUTHORITY: Implementing, and authorized by Sections 18b-102 and 18b-105 of, the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B] (see P.A. 93-0860, effective August 4, 2004).

SOURCE: Adopted at 14 Ill. Reg. 15519, effective September 10, 1990; amended at 15 Ill. Reg. 13171, effective August 21, 1991; amended at 16 Ill. Reg. 14435, effective September 8, 1992; amended at 18 Ill. Reg. 754, effective January 11, 1994; amended at 18 Ill. Reg. 10362, effective June 15, 1994; amended at 19 Ill. Reg. 13050, effective August 30, 1995; amended at 20 Ill. Reg. 15344, effective November 18, 1996; amended at 23 Ill. Reg. 5105, effective March 31, 1999; amended at 24 Ill. Reg. 1954, effective January 19, 2000; amended at 25 Ill. Reg. 2100, effective January 17, 2001; amended at 26 Ill. Reg. 8978, effective June 5, 2002; amended at 26 Ill. Reg. 12749, effective August 12, 2002; amended at 27 Ill. Reg. 9218, effective June 2, 2003; amended at 28 Ill. Reg. 1152, effective January 4, 2004; emergency amendment at 28 Ill. Reg. 12479, effective August 18, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 15636, effective November 19, 2004.

SUBPART A: GENERAL APPLICABILITY AND DEFINITIONS**Section 390.1000 Purpose**

This Part establishes general applicability, definitions, general requirements and information as they pertain to persons subject to the Illinois Motor Carrier Safety Law (the Law) [625 ILCS 5/Ch. 18B]. The Illinois Motor Carrier Safety Regulations (IMCSR) consist of 92 Ill. Adm. Code 385, 386, 390, 391, 392, 393, 395, 396, and 397.

(Source: Amended at 27 Ill. Reg. 9218, effective June 2, 2003)

Section 390.1010 General Applicability

- a) All Parts of the IMCSR except for "Transportation of Hazardous Materials; Driving and Parking" (92 Ill. Adm. Code 397) are applicable to:

Persons employing drivers, drivers and commercial motor vehicles which transport property or passengers in interstate or intrastate commerce. (Section 18b-106 of the Law)

- b) 92 Ill. Adm. Code 397 applies to any employer, employee or motor carrier engaged in the transportation of hazardous materials by a motor vehicle which must be marked or placarded in accordance with "Carriage by Public Highway" (49 CFR 177.823) and to:
- 1) Each officer or employee of the carrier who performs supervisory duties related to the transportation of hazardous materials; and
 - 2) Each person who operates or who is in charge of a motor vehicle containing hazardous materials.
- c) The provisions of 92 Ill. Adm. Code 397 do not apply to the transportation in Illinois of hazardous materials by a farmer when in approved containers and in the amounts and manner specified in 92 Ill. Adm. Code 171.22, Agricultural Exception.
- d) Nothing in the IMCSR shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee safety and health.
- e) The IMCSR requires knowledge of and compliance with the following:

- 1) Every employer shall be knowledgeable of and comply with all requirements contained in the IMCSR which are applicable to that motor carrier's operations.
 - 2) Every driver and employee shall comply with all applicable requirements contained in the IMCSR and shall be instructed accordingly.
 - 3) All motor vehicles' equipment and accessories required by the IMCSR shall be maintained in compliance with all applicable performance and design criteria also set forth in the IMCSR.
- f) Except for provisions in Section 13-101 of the Illinois Vehicle Code [625 ILCS 5/13-101] or unless otherwise specifically provided, the requirements in the IMCSR do not apply to:
- 1) All school bus operations as defined in Section 390.1020 of this Part;
 - 2) Transportation performed by the federal government, a state, or any political subdivision of a state, or an agency established under a compact between states that has been approved by the Congress of the United States;
 - 3) The occasional transportation of personal property by individuals not for compensation nor in the furtherance of a commercial enterprise;
 - 4) The transportation of human corpses or sick and injured persons;
 - 5) The operation of fire trucks and rescue vehicles while involved in emergency and related operations.

Agency Note: See 92 Ill. Adm. Code 386, Subpart C: Public Utility Exemptions, for provisions relating to possible exemptions from the IMCSR for intrastate public utility commercial motor vehicles.

(Source: Amended at 24 Ill. Reg. 1954, effective January 19, 2000)

Section 390.1020 Definitions

The following definitions apply to all Parts in the IMCSR unless a specific Part expressly defines a term different than what is used below:

"Accident" means:

Except as provided below, an occurrence involving a commercial motor vehicle operating on a highway that results in:

A fatality;

Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

One or more motor vehicles incurring disabling damage as a result of the accident, requiring the vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle.

The term accident does not include:

An occurrence involving only boarding and alighting from a stationary motor vehicle; or

An occurrence involving only the loading or unloading of cargo.
(49 CFR 390.5, October 1, 2002)

"Agricultural movements" means the operation of a motor vehicle or combination of vehicles controlled and operated by a private motor carrier of property that is using the vehicle to transport nonhazardous or hazardous agricultural crop production fertilizers or agricultural chemicals from a local source of supply to farm or field, or from one farm or field to another, or from farm or field back to the local source of supply. (Section 1-101.6 of the Illinois Vehicle Code (the Code) [625 ILCS 5/1-101.6])

"Air mile" means a nautical mile, which is equivalent to 6,076 feet or 1,852 meters. Accordingly, 100 air miles are equivalent to 115.08 statute miles or 185.2 kilometers. (Section 18b-101 of the Law (see P.A. 93-0860, effective August 4, 2004))

"Alcohol concentration" (AC) means the concentration of alcohol in a person's blood or breath. When expressed as a percentage it means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. (49 CFR 390.5, October 1, 2002)

"Bus" means any motor vehicle designed, constructed, and/or used for the transportation of passengers, including taxicabs. (49 CFR 390.5, October 1, 2002)

"Business district" means the territory contiguous to and including a highway when within any 600 feet along such highway there are buildings in use for business or industrial purposes, including but not limited to, hotels, banks, or office buildings, railroad stations and public buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway. (Section 1-108 of the Code)

"Charter transportation of passengers" means transportation, using a bus, of a group of persons who, pursuant to a common purpose, under a single contract, at a fixed charge for the motor vehicle, have acquired the exclusive use of the motor vehicle to travel together under an itinerary either specified in advance or modified after having left the place of origin. (49 CFR 390.5, October 1, 2002)

"Code" means the Illinois Vehicle Code [625 ILCS 5].

"Commerce" means trade, commerce or transportation within the State. (Section 1-111.4 of the Code)

"Commercial motor vehicle (CMV)" means:

Any self propelled or towed vehicle used on public highways in interstate and intrastate commerce to transport passengers or property when the vehicle has a gross vehicle weight, a gross vehicle weight rating, a gross combination weight, or a gross combination weight rating of 10,001 or more pounds (4,537 or more kilograms); or

The vehicle is used or designed to transport more than 15 passengers, including the driver; or

The vehicle is designed to carry 15 or fewer passengers and is operated by a contract carrier transporting employees in the course of their employment on a highway of this State; or

The vehicle is used or designed to transport between 9 and 15 passengers, including the driver, for direct compensation, if the vehicle is being operated beyond a radius of 75 air miles (86.3 statute miles or 138.9 kilometers) from the driver's normal work reporting location; or

The vehicle is used in the transportation of hazardous materials in a quantity requiring placarding under the Illinois Hazardous Materials Transportation Act.

This definition shall not include farm machinery, fertilizer spreaders, and other special agricultural movement equipment described in Section 3-809 of the Code nor implements of husbandry as defined in Section 1-130 of the Code. (Section 18b-101 of the Law (see P.A. 93-0860, effective August 4, 2004))

"Commercial Vehicle Inspections" means:

Level 1 - North American Standard Inspection: An inspection that includes each of the items specified under the North American Uniform Out-of-Service Criteria.

As a minimum, North American Standard inspections must include examination of: driver's license, medical examiner's certificate and waiver if applicable, alcohol and drugs, driver's record of duty status as required, hours of service, seat belt, vehicle inspection report, brake system, steering mechanism, wheels and rims, tires, coupling devices, suspension, frame, fuel system, exhaust system, windshield wipers, lighting devices, safe loading, and hazardous material requirements as applicable.

Level 2 - Walk Around Driver/Vehicle Inspection: An examination that, as a minimum, includes: driver's license, medical examiner's certificate, and waiver if applicable, driver's record of duty status as required, hours of service, seat belt, vehicle inspection report, fire extinguisher, warning devices for stopped vehicles, head lamps, turn signals, stop lamps, windshield wipers, wheels, tires, fuel system, exhaust system, visible brake components, coupling devices, cargo securement, low air warning device, visible suspension components, and hazardous material requirements as applicable. It is contemplated that the walk-around driver/vehicle inspection will be conducted without inspecting underneath the vehicle.

Level 3 - Driver Only Inspection: A roadside examination of the driver's license, medical certification and waiver if applicable, driver's record of duty status as required, hours of service, seat belt, and vehicle inspection report.

Level 4 - Special Inspections: Inspections under this heading typically include a one-time examination of a particular item. These examinations are normally made in support of a study or to verify or refute a suspected trend.

Level 5 - Vehicle-Only Inspection: An inspection that includes each of the vehicle inspection items specified under the North American Standard Inspection (Level 1), without a driver present, conducted at any location.

(Commercial Vehicle Safety Alliance (CVSA), CVSA Operations Manual, January 1996)

"Commercial Vehicle Safety Alliance (CVSA)" means the association of state/territory (United States), provincial/territory (Canada), and federal (Mexico) officials responsible for the administration and enforcement of motor carrier safety and hazardous materials laws in the United States, Canada and Mexico working together with the federal governments and industry to improve commercial vehicle safety. (CVSA Operations Manual, January 1996)

"Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended or probated. (49 CFR 390.5, October 1, 2002)

"Department" means the Department of Transportation of the State of Illinois, acting directly or through its duly authorized officers and agents. (Section 1-115.05 of the Code)

"Direct assistance" means transportation and other relief services provided by a motor carrier or its driver(s) incident to the immediate restoration of essential services (such as electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as food and

fuel). It does not include transportation related to long-term rehabilitation of damaged physical infrastructure or routine commercial deliveries after the initial threat to life and property has passed. (49 CFR 390.5, October 1, 2002)

"Direct compensation" means payment made to the motor carrier by the passengers or a person acting on behalf of the passengers for the transportation services provided, and not included in a total package charge or other assessment for highway transportation services. (Section 18b-101 of the Law (see P.A. 93-0860, effective August 4, 2004))

"Disabling damage" means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

Inclusions: Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

Exclusions:

Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

Tire disablement without other damage even if no spare tire is available.

Headlamp or taillight damage.

Damage to turn signals, horn or windshield wipers which makes them inoperative. (49 CFR 390.5, October 1, 2002)

"Driving a commercial motor vehicle while under the influence of alcohol" means committing any one or more of the following acts in a CMV: driving a CMV while the person's alcohol concentration is 0.04 percent or more; driving under the influence of alcohol, as prescribed by state law; or refusal to undergo such testing as is required by any state or jurisdiction in the enforcement of Table 1 to "Commercial Driver's License Standards; Requirements and Penalties" (49 CFR 383.51) or "Driving of Motor Vehicles" (49 CFR 392.5(a)(2)). (49 CFR 390.5, October 1, 2002)

"Driveaway-towaway operation" means any operation in which a motor vehicle constitutes the commodity being transported and one or more sets of wheels of

the vehicle being transported are on the surface of the roadway during transportation. (49 CFR 390.5, October 1, 2002)

"Driver" means any person who operates any commercial motor vehicle. (49 CFR 390.5, October 1, 2002)

"Emergency" means any hurricane, tornado, storm (e.g., thunderstorm, snowstorm, icestorm, blizzard, sandstorm, etc.), high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mud slide, drought, forest fire, explosion, blackout or other occurrence, natural or man-made, which interrupts the delivery of essential services (such as electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as food and fuel) or otherwise immediately threatens human life or public welfare, provided such hurricane, tornado, or other event results in:

A declaration of an emergency by the President of the United States, the Governor of a state, or their authorized representatives having authority to declare emergencies; by the FMCSA Field Administrator for the geographical area in which the occurrence happens; or by other Federal, State or local government officials having authority to declare emergencies, including but not limited to the Illinois Department of Transportation's Director, Division of Traffic Safety, or his designee; or

A request by a police officer for tow trucks to move wrecked or disabled motor vehicles. (49 CFR 390.5, October 1, 2002)

"Emergency relief" means an operation in which a motor carrier or driver of a commercial motor vehicle is providing direct assistance to supplement State and local efforts and capabilities to save lives or property or to protect public health and safety as a result of an emergency as defined in this Section. (49 CFR 390.5, October 1, 2002)

"Employee" means:

A driver of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle);

A mechanic;

A freight handler; and

Any individual, who in the course of his or her employment directly affects commercial motor vehicle safety, but such term does not include an employee of the United States, any state, any political subdivision of a state, or any agency established under a compact between states and approved by the Congress of the United States who is acting within the course of such employment. (49 CFR 390.5, October 1, 2002)

"Employer" means any person engaged in a business affecting interstate or intrastate commerce who owns or leases a commercial motor vehicle in connection with that business, or assigns employees to operate it, but such term does not include the United States, any state, any political subdivision of a state, or any agency established under a compact between states approved by the Congress of the United States.

"Exempt intracity zone" means the geographic area of a municipality or the commercial zone of that municipality described by the Federal Motor Carrier Safety Administration (FMCSA) in 49 CFR 372, subpart B. The descriptions are printed in Appendix F to the Federal Motor Carrier Safety Regulations. A driver may be considered to operate a commercial motor vehicle wholly within an exempt intracity zone notwithstanding any common control, management, or arrangement for a continuous carriage or shipment to or from a point without such zone. (49 CFR 390.5, October 1, 2002)

"Exempt motor carrier" means a person engaged in transportation exempt from economic regulation by the Federal Motor Carrier Safety Administration (FMCSA) under 49 USC 13506. "Exempt motor carriers" are subject to the requirements set forth in the Illinois Motor Carrier Safety Regulations. (49 CFR 390.5, October 1, 2002)

"Farm to market agricultural transportation" means the operation of a motor vehicle controlled and operated by a farmer who is a private motor carrier of property; who is using the vehicle to transport agricultural products to or from a farm operated by the farmer, or to transport farm machinery or farm supplies to or from a farm operated by the farmer; and who is not using the commercial vehicle to transport hazardous materials of a type or quantity that requires the vehicle to be placarded in accordance with the Illinois Hazardous Materials Transportation Act. (Section 1-119.6 of the Code)

"Farm machinery" -- see definition of "Special Agricultural Movement Equipment" in this Section.

"Farm vehicle driver" means a person who drives only a commercial motor vehicle that is --

Controlled and operated by a farmer as a private motor carrier of property;

Being used to transport either --

Agricultural products, or

Farm machinery, farm supplies, or both, to or from a farm;

Not being used in the operation of a for-hire motor carrier;

Not carrying hazardous materials of a type or quantity that requires the commercial motor vehicle to be placarded in accordance with 49 CFR 177.823; and

Being used within 150 air-miles of the farmer's farm. (49 CFR 390.5, October 1, 2002)

"Farmer" means any person who operates a farm or is directly involved in the cultivation of land, crops, or livestock which:

Are owned by that person; or

Are under the direct control of that person. (49 CFR 390.5, October 1, 2002)

"Fatality" means any injury which results in the death of a person at the time of the motor vehicle accident or within 30 days of the accident. (49 CFR 390.5, October 1, 2002)

"Federal Motor Carrier Safety Administrator" means the chief executive of the Federal Motor Carrier Safety Administration, an agency within the United States Department of Transportation. (49 CFR 390.5, October 1, 2002)

"FMCSA Field Administrator" means the Field Administrator, Federal Motor Carrier Safety Administration, for a given geographical area of the United States. (49 CFR 390.5, October 1, 2002)

"For-hire" means the operation of a vehicle for compensation and subject to federal regulation by the Interstate Commerce Commission or to State regulation by the Illinois Commerce Commission and those vehicles governed by Chapters 8 and 9 under the Code and regulated by the Secretary of State. (Section 1-122.5 of the Code)

"For-hire motor carrier" means a person engaged in the transportation of goods or passengers for compensation. (49 CFR 390.5, October 1, 2002)

"Gross Combination Weight Rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon. (49 CFR 390.5, October 1, 2002)

"Gross Vehicle Weight Rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single motor vehicle. (49 CFR 390.5, October 1, 2002)

"Hazardous material" means a substance or material which has been determined by the Secretary of the United States Department of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated. (49 CFR 390.5, October 1, 2002)

"Hazardous substance" means a material, and its mixtures or solutions, that is identified in Appendix A to 49 CFR 172.101, List of Hazardous Substances and Reportable Quantities when offered for transportation in one package, or in one transport motor vehicle if not packaged, and when the quantity of the material therein equals or exceeds the reportable quantity (RQ). This definition does not apply to petroleum products that are lubricants or fuels, or to mixtures or solutions of hazardous substances if in a concentration less than that shown in the table in "General Information, Regulations and Definitions" (49 CFR 171.8) based on the reportable quantity (RQ) specified for the materials listed in Appendix A to 49 CFR 172.101. (49 CFR 390.5, October 1, 2002)

"Hazardous waste" means any material that is subject to the hazardous waste manifest requirements of the EPA specified in "Standards Applicable to Generators of Hazardous Waste" (40 CFR 262) or would be subject to these requirements absent an interim authorization to a state under "State Program Requirements" (40 CFR 123), Subpart F. (49 CFR 390.5, October 1, 2002)

“Highway” means any road, street, or way, whether on public or private property, open to public travel. “Open to public travel” means that the road section is available, except during scheduled periods, extreme weather or emergency conditions, passable by four-wheel standard passenger cars, and open to the general public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of registration. Toll plazas of public toll roads are not considered restrictive gates. (49 CFR 390.5, October 1, 2002)

"Illinois Motor Carrier Safety Regulations (IMCSR)" means the requirements established in Parts 385, 386, 390, 391, 392, 393, 395, 396 and 397 (92 Ill. Adm. Code: Chapter I, Subchapter d).

"Illinois State Police" means any individual officer of the Illinois State Police.

"Implement of husbandry" means every vehicle designed and adapted exclusively for agricultural, horticultural, or livestock raising operations, including farm wagons, wagon trailers or like vehicles used in connection therewith, or for lifting or carrying an implement of husbandry provided that no farm wagon, wagon trailer or like vehicle having a gross weight of more than 36,000 pounds, shall be included hereunder. (Section 1-130 of the Code)

"Interstate commerce" means transportation between two or more states or transportation originating in one state and passing into or through other states for delivery in another state. (Section 1-133 of the Code)

"Intrastate commerce" means any trade, traffic, or transportation in Illinois which is not described in the term "interstate commerce." (49 CFR 390.5, October 1, 2002)

"Law" means the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B].

"Medical Examiner" means a person who is licensed, certified, and/or registered, in accordance with applicable State laws and regulations, to perform physical examinations. In Illinois, the term includes doctors of medicine, doctors of osteopathy, doctors of chiropractic, physician assistants who have been delegated the performance of medical examinations by his/her supervising physician, and advanced practice nurses who have a written collaborative agreement with a collaborating physician that authorizes him/her to perform physical examinations.

"Motor carrier" means a for-hire motor carrier or a private motor carrier. The term "motor carrier" includes a motor carrier's agents, officers and

representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories. For purposes of the IMCSR, the definition of "motor carrier" includes the terms "employer" and "exempt motor carrier." (49 CFR 390.5, October 1, 2002)

"Motor vehicle" means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof determined by the Federal Motor Carrier Safety Administration, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service. (49 CFR 390.5, October 1, 2002)

"Multiple-employer driver" means a driver who, in any period of 7 consecutive days, is employed or used as a driver by more than one motor carrier. (49 CFR 390.5, October 1, 2002)

"North American Uniform Out-Of-Service Criteria" means a set of guidelines established by the CVSA and recognized by all states, the provinces of Canada, and Mexico as acceptable standards for identifying driver violations and critical vehicle inspection items that may render a driver, a commercial motor vehicle or a hazardous material load out-of-service. The criteria is enforced, in some states, by qualified law enforcement officers of a municipality, county, state or the federal government. In Illinois, only qualified officers of the Illinois State Police and the federal government have authority to enforce the out-of-service criteria.

"Operator" -- see driver.

"Other terms" -- any other term used in the IMCSR is used in its commonly accepted meaning, except where such other term has been defined elsewhere in the IMCSR. In that event, the definition therein given shall apply. (49 CFR 390.5, October 1, 2002)

"Out-of-service order" means a declaration by the Illinois State Police or by an authorized enforcement officer of a Federal, state, Canadian, Mexican or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation, is out-of-service pursuant to 49 CFR 386.72, 49 CFR 392.5, 49 CFR 395.13, 49 CFR 396.9, or 92 Ill. Adm. Code 392.2000(d), or compatible laws,

or the North American Uniform Out-of-Service Criteria as defined in this Section.

"Person" means any natural person or individual, governmental body, firm, association, partnership, copartnership, joint venture, company, corporation, joint stock company, trust, estate or any other legal entity or their legal representative, agent or assigns. (Section 18b-101 of the Law)

"Planting and harvesting season" means the period of February 1 through November 30 each year.

"Principal place of business" means a single location designated by the motor carrier, normally its headquarters, for purposes of identification under this Subchapter d. The motor carrier must make records required by 49 CFR 382 and 49 CFR 387, as well as Parts 390, 391, 395, 396, and 397 of this Subchapter d, available for inspection at this location within 48 hours (Saturdays, Sundays, and Federal or State holidays excluded) after a request has been made by a special agent or authorized representative of the Federal Motor Carrier Safety Administration or the Illinois Department of Transportation. (49 CFR 390.5, October 1, 2002)

"Private motor carrier" means a person who provides transportation of property or passengers, by commercial motor vehicle, and is not a for-hire motor carrier. (49 CFR 390.5, October 1, 2002)

"Private motor carrier of passengers (business)" means a private motor carrier engaged in the interstate or intrastate transportation of passengers which is provided in the furtherance of a commercial enterprise and is not available to the public at large. (49 CFR 390.5, October 1, 2002)

"Private motor carrier of passengers (nonbusiness)" means a private motor carrier involved in the interstate or intrastate transportation of passengers that does not otherwise meet the definition of a private motor carrier of passengers (business). (49 CFR 390.5, October 1, 2002)

"Radar detector" means any device or mechanism to detect the emission of radio microwaves, laser beams or any other future speed measurement technology employed by enforcement personnel to measure the speed of commercial motor vehicles upon public roads and highways for enforcement purposes. Excluded from this definition are radar detection devices that meet both of the following requirements:

Transported outside the driver's compartment of the commercial motor vehicle. For this purpose, the driver's compartment of a passenger-carrying CMV shall include all space designed to accommodate both the driver and the passengers; and

Completely inaccessible to, inoperable by, and imperceptible to the driver while operating the commercial motor vehicle. (49 CFR 390.5, October 1, 2002)

"Residential district" means the territory adjacent to and including a highway which is not a business district and for a distance of 300 feet or more along the highway is primarily improved with residences. (49 CFR 390.5, October 1, 2002)

"School bus" means a motor vehicle that meets all of the special requirements for school buses in Sections 12-801, 12-802, 12-803 and 12-805 of the Code and is designed or used to carry more than 10 passengers, including the driver, and is used for transporting preprimary, primary or secondary school students from home to school or from school to home or for intrastate school sanctioned functions.

"School bus operation" means the use of a school bus to transport only school children and/or school personnel from home to school and from school to home and for intrastate school sanctioned functions.

"Secretary" means the Secretary of the Illinois Department of Transportation.

"Single-employer driver" means a driver who, in any period of 7 consecutive days, is employed or used as a driver solely by a single motor carrier. This term includes a driver who operates a commercial motor vehicle on an intermittent, casual, or occasional basis. (49 CFR 390.5, October 1, 2002)

"Special agent" - See 49 CFR Appendix B to Subchapter B of Chapter III.

"Special agricultural movement equipment" means a vehicle of the second division having a corn sheller, a welldriller, hay press, clover huller, feed mixer and unloader or other farm machinery permanently mounted thereon and used solely for transporting the same, farm wagon type trailers having a fertilizer spreader attachment permanently mounted thereon, having a gross weight of not to exceed 36,000 pounds and farm wagon type tank trailers (i.e., nurse tanks) not to exceed 3,000 gallon capacity. Also includes any single unit self-propelled agricultural fertilizer implement, designed for both on and off road

use, equipped with flotation tires and otherwise especially adapted for the application of plant food materials or agricultural chemicals. (Section 3-809 of the Code)

"State" means a state of the United States and the District of Columbia and includes a political subdivision of a state. (49 CFR 390.5, October 1, 2002)

"Trailer" includes:

"Full trailer" means any motor vehicle other than a pole trailer which is designed to be drawn by another motor vehicle and so constructed that no part of its weight, except for the towing device, rests upon the self-propelled towing motor vehicle. A semitrailer equipped with an auxiliary front axle (converter dolly) shall be considered a full trailer. (49 CFR 390.5, October 1, 2002)

"Pole trailer" means any motor vehicle which is designed to be drawn by another motor vehicle and attached to the towing motor vehicle by means of a "reach" or "pole," or by being "boomed" or otherwise secured to the towing vehicle, for transporting long or irregularly shaped loads such as poles, pipes, or structural members, which generally are capable of sustaining themselves as beams between the supporting connections. (49 CFR 390.5, October 1, 2002)

"Semitrailer" means any motor vehicle, other than a pole trailer, which is designed to be drawn by another motor vehicle and is constructed so that some part of its weight rests upon the self-propelled towing motor vehicle. (49 CFR 390.5, October 1, 2002)

"Truck" means any self-propelled commercial motor vehicle except a truck tractor, designed and/or used for the transportation of property. (49 CFR 390.5, October 1, 2002)

"Truck tractor" means a self-propelled commercial motor vehicle designed and/or used primarily for drawing other vehicles. (49 CFR 390.5, October 1, 2002)

"United States" means the 50 states and the District of Columbia. (49 CFR 390.5, October 1, 2002)

"US DOT" means the United States Department of Transportation.

(Source: Amended at 28 Ill. Reg. 15636, effective November 19, 2004)

Section 390.1030 Rules of Construction

- a) In the IMCSR unless the context requires otherwise:
 - 1) Words imparting the singular include the plural;
 - 2) Words imparting the plural include the singular; and
 - 3) Words imparting the present tense include the future tense. (49 CFR 390.7, October 1, 2002)
- b) In the IMCSR:
 - 1) "Officer" includes any person authorized by law to perform the duties of the office;
 - 2) "Writing" includes printing and typewriting;
 - 3) "Shall" is used in an imperative sense;
 - 4) "Must" is used in an imperative sense;
 - 5) "Should" is used in a recommendatory sense;
 - 6) "May" is used in a permissive sense; and
 - 7) "Includes" is used as a word of inclusion, not limitation. (49 CFR 390.7, October 1, 2002)

(Source: Amended at 27 Ill. Reg. 9218, effective June 2, 2003)

SUBPART B: GENERAL REQUIREMENTS AND INFORMATION

Section 390.2000 Incorporation by Reference

- a) 49 CFR 390, subpart B is hereby incorporated by reference as that subpart of the Federal Motor Carrier Safety Regulations (FMCSR) that was in effect on October 1, 2002, as amended at 67 FR 61818, October 2, 2002, as amended at 67 FR 63019, October 9, 2002, and as amended at 68 FR 22456, April 28, 2003

subject only to the exceptions in subsection (b). No later amendments to or editions of 49 CFR 390, subpart B are incorporated.

b) The following interpretations of, additions to and deletions from 49 CFR 390, subpart B shall apply for the purposes of this Subpart:

- 1) 49 CFR 390.9 is deleted and not incorporated.
- 2) 49 CFR 390.15 is not incorporated and the following is substituted therefor:

A motor carrier shall make all records and information pertaining to an accident available to an authorized representative or special agent of the Federal Motor Carrier Safety Administration or Illinois Department of Transportation upon request or as part of any inquiry within such time as the request or inquiry may specify. A motor carrier shall give an authorized representative of the Federal Motor Carrier Safety Administration or Illinois Department of Transportation all reasonable assistance in the investigation of any accident including providing a full, true and correct answer to any question of the inquiry.

- 3) 49 CFR 390.21 applies only to commercial motor vehicles engaged in interstate commerce.
- 4) 49 CFR 390.23(a)(2)(i)(A) is not incorporated and the following substituted therefor:

An emergency has been declared by a Federal, State, or local government official having authority to declare an emergency, including but not limited to the Illinois Department of Transportation's Director, Division of Traffic Safety, or his designee.

- 5) 49 CFR 390.25 applies only to commercial motor vehicles engaged in interstate commerce.
- 6) 49 CFR 390.29(b) is not incorporated and the following is substituted therefor:

All records and documents required by this Subchapter d that are maintained at a regional office or driver work-reporting location shall be made available for inspection upon request by a special agent or authorized representative of the Federal Highway Administration or Illinois Department of Transportation at the motor carrier's principal place of business or other location specified by the agent or representative within 48 hours after a request is made. Saturdays, Sundays, and Federal and State holidays are excluded from the computation of the 48-hour period of time.

- 7) Any reference to "this Part" in the incorporated material shall mean 92 Ill. Adm. Code 390.
- 8) Any reference to "this Chapter" or "this Subchapter" in the incorporated material shall mean 92 Ill. Adm. Code: Chapter I, Subchapter d.
- 9) Any reference to a section in the incorporated material shall be read to refer to that Section in the IMCSR.
- 10) Any reference to "Part 325 of Subchapter A" shall be read to refer to "Compliance with Interstate Motor Carrier Noise Emission Standards" (49 CFR 325, October 1, 2002).

(Source: Amended at 28 Ill. Reg. 1152, effective January 4, 2004)

TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER d: MOTOR CARRIER SAFETY REGULATIONS

PART 391
QUALIFICATION OF DRIVERS

Section

391.1000 General

391.2000 Incorporation by Reference of 49 CFR 391

AUTHORITY: Implementing, and authorized by Sections 18b-102 and 18b-105 of, the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B].

SOURCE: Adopted at 14 Ill. Reg. 15560, effective September 10, 1990; amended at 15 Ill. Reg. 13189, effective August 21, 1991; amended at 16 Ill. Reg. 5362, effective March 23, 1992; amended at 16 Ill. Reg. 14715, effective September 14, 1992; amended at 18 Ill. Reg. 783, effective January 11, 1994; amended at 19 Ill. Reg. 13077, effective August 30, 1995; amended at 20 Ill. Reg. 15365, effective November 18, 1996; amended at 23 Ill. Reg. 5133, effective March 31, 1999; amended at 24 Ill. Reg. 1991, effective January 19, 2000; amended at 25 Ill. Reg. 2126, effective January 17, 2001; amended at 26 Ill. Reg. 8997, effective June 5, 2002; amended at 27 Ill. Reg. 9238, effective June 2, 2003.

Section 391.1000 General

- a) This Part establishes the minimum qualifications for persons who drive commercial motor vehicles.
- b) This Part does not apply to a farm vehicle driver except a farm vehicle driver who drives an articulated (combination) motor vehicle that has a gross weight, including its load, of more than 10,000 pounds. (For limited exemptions for farm vehicle drivers of heavier articulated vehicles see 49 CFR 391.67) This Part does not apply to the driver of any intrastate articulated vehicle which meets the definition of special agricultural movement equipment, farm machinery or implement of husbandry as defined in 92 Ill. Adm. Code 390.1020.

(Source: Amended at 18 Ill. Reg. 783, effective January 11, 1994)

Section 391.2000 Incorporation by Reference of 49 CFR 391

- a) The Department hereby incorporates 49 CFR 391 by reference, as that part of the Federal Motor Carrier Safety Regulations (FMCSR) (49 CFR 390, 391, 392, 393, 395, 396, and 397) that was in effect on October 1, 2002, as amended at 67 FR 61818, October 2, 2002 subject only to the exceptions in subsection (c). No later amendments to or editions of 49 CFR 391 are incorporated.
- b) References to subchapters, parts, subparts, sections or paragraphs shall be read to refer to the appropriate citation in 49 CFR 391.
- c) The following interpretations of, additions to and deletions from 49 CFR 391 shall apply for purposes of this Part.
 - 1) Authorized Illinois State Police shall place drivers out-of-service for any violation of the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B] or the Illinois Motor Carrier Safety Regulations that warrants placing the driver out-of-service under the "North American Uniform Out-of-Service Criteria" as defined at 92 Ill. Adm. Code 390.1020.
 - 2) 49 CFR 391.11(b)(1) does not apply to the operator of a commercial motor vehicle used in intrastate commerce.
 - 3) *Paragraphs (b)(3) (insulin dependent diabetic) and (b)(10) (minimum visual acuity) of 49 CFR 391.41 shall not apply to the driver of a commercial motor vehicle with a gross vehicle weight rating or gross combination weight of over 12,000 lbs., used in the intrastate transportation of property who immediately prior to July 29, 1986 was eligible and licensed to operate a motor vehicle subject to the Illinois Motor Carrier Safety Regulations (IMCSR) and was engaged in operating such vehicles, and who was disqualified on July 29, 1986 by the adoption of 49 CFR 391 by reason of the application of paragraphs (b)(3) and (b)(10) of 49 CFR 391.41 with respect to a physical condition existing at that time unless such driver has a record of accidents which would indicate a lack of ability to operate a motor vehicle in a safe manner. (Section 18b-105 of the Law)*
 - 4) Paragraphs (b)(3) (insulin dependent diabetic) and (b)(10) (minimum visual acuity) of 49 CFR 391.41 shall not apply to the driver of a commercial motor vehicle which either has a gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR) of between 10,000 and 12,001 pounds; or which is designed to transport more than

15 passengers, including the driver; or which has a GVWR or GCWR of less than 12,001 pounds and transports hazardous materials in a quantity requiring placarding under the Illinois Hazardous Materials Transportation Act. The vehicle must be used in intrastate transportation. The driver must have been eligible and licensed to operate a motor vehicle subject to the IMCSR and engaged in operating such vehicle immediately prior to January 17, 1992. The driver must have been disqualified on January 17, 1992 by the adoption of Public Act 87-829 which made the IMCSR applicable to vehicles described above. The reason for disqualification must have been the application of paragraphs (b)(3) and (b)(10) of 49 CFR 391.41 with respect to a physical condition existing at that time. This exception does not apply to any driver who has a record of accidents which would indicate a lack of ability to operate a motor vehicle in a safe manner.

- 5) 49 CFR 391.43(a) is not incorporated and the following substituted therefor:

Except as provided by 49 CFR 391.43(b), the medical examination shall be performed by a licensed medical examiner as defined in 92 Ill. Adm. Code 390.1020.

- 6) If a medical examiner determines that the driver is qualified to drive only in intrastate transportation due to the application of the provisions of Section 391.2000(c)(3) or 391.2000(c)(4) above, the following shall appear on the medical examiner's certificate: "Qualified only for intrastate transportation in Illinois."

- 7) 49 CFR 391.49(a) is not incorporated and the following substituted therefor:

A person who is not physically qualified to drive under 49 CFR 391, and who is otherwise qualified to drive a commercial motor vehicle, may drive a commercial motor vehicle in interstate or intrastate transportation if the Division Administrator, FMCSA, has granted a Skill Performance Evaluation (SPE) Certificate to that person.

(Source: Amended at 27 Ill. Reg. 9238, effective June 2, 2003)

TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER d: MOTOR CARRIER SAFETY REGULATIONS

PART 392
DRIVING OF COMMERCIAL MOTOR VEHICLES

Section

392.1000 General

392.2000 Incorporation by Reference of 49 CFR 392

AUTHORITY: Implementing, and authorized by Sections 18b-102 and 18b-105 of, the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B].

SOURCE: Adopted at 14 Ill. Reg. 15503, effective September 10, 1990; amended at 15 Ill. Reg. 13155, effective August 21, 1991; amended at 18 Ill. Reg. 740, effective January 11, 1994; amended at 18 Ill. Reg. 10359, effective June 15, 1994; amended at 19 Ill. Reg. 13038, effective August 30, 1995; amended at 20 Ill. Reg. 15330, effective November 18, 1996; amended at 23 Ill. Reg. 5093, effective March 31, 1999; amended at 24 Ill. Reg. 1942, effective January 19, 2000; amended at 25 Ill. Reg. 2090, effective January 17, 2001; amended at 26 Ill. Reg. 9002, effective June 5, 2002; amended at 27 Ill. Reg. 9243, effective June 2, 2003.

Section 392.1000 General

This Part prescribes the requirements for the management, maintenance, operation, or driving of motor vehicles, or the hiring, supervising, training, assigning, or dispatching of drivers in Illinois.

Section 392.2000 Incorporation by Reference of 49 CFR 392

- a) "Driving of Commercial Motor Vehicles" (49 CFR 392) is incorporated by reference, as that part of the Federal Motor Carrier Safety Regulations (FMCSR) (49 CFR 390, 391, 392, 393, 395, 396, and 397) that was in effect on October 1, 2002. No later amendments to or editions of 49 CFR 392 are incorporated.
- b) References to subchapters, parts, subparts, sections or paragraphs shall be read to refer to the appropriate citation in the FMCSR.
- c) The following addition to 49 CFR 392 shall apply for purposes of this Part.

Authorized Illinois State Police shall place drivers out-of-service for any violation of the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B] or the Illinois Motor Carrier Safety Regulations that warrants placing the driver out-of-service under the "North American Uniform Out-of-Service Criteria" as defined at 92 Ill. Adm. Code 390.1020.

- d) 49 CFR 392.9a (Operating authority) is not incorporated and the following is substituted therefor:
- 1) Registration required. A motor vehicle providing transportation requiring registration under 49 USC 13902 may not be operated without the required registration or operated beyond the scope of its registration.
 - 2) Penalties. Every motor vehicle providing transportation requiring registration under 49 USC 13902 shall be ordered out-of-service if determined to be operating without registration or beyond the scope of its registration. In addition, the motor carrier may be subject to penalties in accordance with 49 USC 14901.
 - 3) Driver compliance. Upon the issuance of the out-of-service order under subsection (d)(2) of this Section, the driver shall comply immediately with such order.

(Source: Amended at 27 Ill. Reg. 9243, effective June 2, 2003)

TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER d: MOTOR CARRIER SAFETY REGULATIONS

PART 393
PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

Section

393.1000

General

393.2000

Incorporation by Reference of 49 CFR 393

AUTHORITY: Implementing, and authorized by Sections 18b-102 and 18b-105 of, the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B].

SOURCE: Adopted at 14 Ill. Reg. 15537, effective September 10, 1990; amended at 15 Ill. Reg. 13185, effective August 21, 1991; amended at 18 Ill. Reg. 774, effective January 11, 1994; amended at 19 Ill. Reg. 13070, effective August 30, 1995; amended at 20 Ill. Reg. 15362, effective November 18, 1996; amended at 23 Ill. Reg. 5124, effective March 31, 1999; amended at 24 Ill. Reg. 1974, effective January 19, 2000; amended at 25 Ill. Reg. 2117, effective January 17, 2001; amended at 26 Ill. Reg. 9005, effective June 5, 2002; amended at 27 Ill. Reg. 9247, effective June 2, 2003; amended at 28 Ill. Reg. 1157, effective January 4, 2004.

Section 393.1000 General

This Part prescribes the requirements for parts and accessories necessary for safe operation of a commercial motor vehicle in Illinois.

Section 393.2000 Incorporation by Reference of 49 CFR 393

- a) "Parts and Accessories Necessary for Safe Operation" (49 CFR 393) is incorporated by reference as that part of the Federal Motor Carrier Safety Regulations (FMCSR) (49 CFR 390, 391, 392, 393, 395, 396 and 397) that was in effect on October 1, 2002, as amended at 67 FR 61818, October 2, 2002, and as amended at 67 FR 63966, October 16, 2002 subject only to the exceptions in subsection (c). No later amendments to or editions of 49 CFR 393 are incorporated.
- b) References to subchapters, parts, subparts, sections or paragraphs shall be read to refer to the appropriate citation in 49 CFR.
- c) The following interpretations of, additions to, and deletions from 49 CFR 393 shall apply for purposes of this Part.

- 1) 49 CFR 393.93 *shall not apply to those commercial motor vehicles engaged in intrastate commerce which were manufactured before June 30, 1972* (Section 18b-105(c)(1) of the Illinois Motor Carrier Safety Law (the Law) [625 ILCS 5/18b-105(c)(1)]).
- 2) 49 CFR 393.86 *shall not apply for those vehicles registered as farm trucks under Section 3-815(c) of the Illinois Vehicle Code (the Code) [625 ILCS 5/3-815(c)] and utilized in intrastate commerce* (Section 18b-105(c)(2) of the Law).
- 3) Authorized Illinois State Police shall place vehicles out-of-service for any violation of the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B] or the Illinois Motor Carrier Safety Regulations that warrants placing the vehicle out-of-service under the "North American Uniform Out-of-Service Criteria" as defined at 92 Ill. Adm. Code 390.1020.

(Source: Amended at 28 Ill. Reg. 1157, effective January 4, 2004)

TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER d: MOTOR CARRIER SAFETY REGULATIONS

PART 395
HOURS OF SERVICE OF DRIVERS

Section

395.1000 General

395.2000 Incorporation by Reference of 49 CFR 395

AUTHORITY: Implementing, and authorized by Sections 18b-102 and 18b-105 of, the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B].

SOURCE: Adopted at 14 Ill. Reg. 15507, effective September 10, 1990; amended at 15 Ill. Reg. 13161, effective August 21, 1991; amended at 16 Ill. Reg. 14425, effective September 8, 1992; amended at 18 Ill. Reg. 743, effective January 11, 1994; amended at 19 Ill. Reg. 13041, effective August 30, 1995; amended at 20 Ill. Reg. 15335, effective November 18, 1996; amended at 23 Ill. Reg. 5096, effective March 31, 1999; amended at 24 Ill. Reg. 1944, effective January 19, 2000; amended at 25 Ill. Reg. 2092, effective January 17, 2001; amended at 26 Ill. Reg. 9009, effective June 5, 2002; amended at 26 Ill. Reg. 12766, effective August 12, 2002; amended at 27 Ill. Reg. 9251, effective June 2, 2003; amended at 28 Ill. Reg. 1161, effective January 4, 2004; emergency amendment at 28 Ill. Reg. 6654, effective April 14, 2004, for a maximum of 150 days; emergency expired September 10, 2004.

Section 395.1000 General

This Part prescribes the hours of service requirements for drivers of commercial motor vehicles in Illinois.

Section 395.2000 Incorporation by Reference of 49 CFR 395

- a) "Hours of Service of Drivers" (49 CFR 395) is incorporated by reference, as that part of the Federal Motor Carrier Safety Regulations (FMCSR) (49 CFR 390, 391, 392, 393, 395, 396 and 397) that was in effect on October 1, 2002, as amended at 68 FR 22456, April 28, 2003 and as amended at 68 FR 56208, September 30, 2003 subject only to the exceptions in subsection (c). No later amendments to or editions of 49 CFR 395 are incorporated.
- b) References to subchapters, parts, subparts, sections or paragraphs shall be read to refer to the appropriate citation in 49 CFR.

- c) The following interpretations of, additions to and deletions from 49 CFR 395 shall apply for purposes of this Part.
- 1) 49 CFR 395.1(h) and 395.1(i) are deleted and not incorporated.
 - 2) 49 CFR 395.1(e) as it applies to intrastate carriers is amended to establish that *drivers shall operate within a 150 air-mile radius of the normal work reporting location to qualify for exempt status.* (Section 18b-105(d) of the Illinois Motor Carrier Safety Law (the Law) [625 ILCS 5/18b-105(d)])
 - 3) 49 CFR 395.13 is not incorporated and the following substituted therefor:
 - A) Authority to declare drivers out-of-service due to any violation of the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B] or the Illinois Motor Carrier Safety Regulations that warrants placing the driver out-of-service under the "North American Uniform Out-of-Service Criteria" as defined in 92 Ill. Adm. Code 390.1020. Every Illinois State Police officer certified to conduct Commercial Vehicle Inspections, Levels 1, 2, 3, 4 or 5 (as defined in 92 Ill. Adm. Code 390) is authorized to declare a driver out-of-service as set forth in subsection (c)(3)(B) and to notify the motor carrier of that declaration upon finding at the time and place of examination that declaring the driver out-of-service is warranted. Notification to the motor carrier is accomplished when the Illinois State Police officer presents the Illinois Commercial Driver/Vehicle Inspection Report (Form ISP 5-238) to the driver.
 - B) Out-of-Service Criteria
 - i) No driver shall drive after being on duty in excess of the maximum periods permitted by 49 CFR 395.
 - ii) No driver required to maintain a record of duty status under 49 CFR 395.8 or 395.15 shall fail to have a record of duty status current on the day of examination and for the prior seven consecutive days.
 - iii) Exception. A driver failing only to have possession of a record of duty status current on the day of examination and

the prior day, but who has completed records of duty status up to that time (previous 6 days), will be given the opportunity to make the duty status record current.

C) Responsibilities of motor carriers

i) No motor carrier shall:

Require or permit a driver who has been declared out-of-service to operate a commercial motor vehicle until that driver may lawfully do so under the requirements in 49 CFR 395.

Require a driver who has been declared out-of-service for failure to prepare a record of duty status to operate a commercial motor vehicle until that driver has been off duty for the appropriate number of consecutive hours required by 49 CFR 395, as amended at 68 FR 22456, April 28, 2003, and is in compliance with this Section. The appropriate consecutive hours off duty period may include sleeper berth time.

ii) A motor carrier shall, if required (refer to 92 Ill. Adm. Code 396.2010 for requirement), complete the "Notice to Motor Carrier" portion of the Form ISP 5-238 (Illinois Commercial Driver/Vehicle Inspection Report) and deliver the copy of the form either personally or by mail to the Illinois State Police Motor Carrier Safety Section at the address specified upon the form within 15 days following the date of examination. If the motor carrier mails the form, delivery is made on the date it is postmarked.

D) Responsibilities of the Driver:

i) No driver who has been declared out-of-service shall operate a commercial motor vehicle until that driver may lawfully do so under the requirements of 49 CFR 395.

ii) No driver who has been declared out-of-service, for failing to prepare a record of duty status, shall operate a commercial motor vehicle until the driver has been off duty for the appropriate number of consecutive hours required

by 49 CFR 395, as amended at 68 FR 22456, April 28, 2003, and is in compliance with this Section.

- iii) A driver to whom a form has been tendered declaring the driver out-of-service shall within 24 hours thereafter deliver or mail the copy to a person or place designated by motor carrier to receive it.
 - iv) This Section does not alter the hazardous materials requirements prescribed in 92 Ill. Adm. Code 397 pertaining to attendance and surveillance of commercial motor vehicles.
- 4) Part 395 *shall not apply to agricultural movements* that are engaged in intrastate commerce during planting and harvesting season as defined in 92 Ill. Adm. Code 390.1020. (Section 18b-105(c)(6) of the Law)
 - 5) Part 395 *shall not apply to all farm to market agricultural transportation* as defined in 92 Ill. Adm. Code 390.1020 that is engaged in intrastate commerce. (Section 18b-105(c)(6) of the Law)
 - 6) Part 395 *shall not apply to any grain hauling operations* that are engaged in intrastate commerce *within a radius of 200 air miles of the normal work reporting location.* (Section 18b-105(c)(6) of the Law)
- d) *A contract carrier shall limit the hours of service by a driver transporting employees in the course of their employment on a road or highway of this State in a vehicle designed to carry 15 or fewer passengers to 12 hours of vehicle operation per day, 15 hours of on-duty service per day, and 70 hours of on-duty service in 7 consecutive days. The contract carrier shall require a driver who has 12 hours of vehicle operation per day or 15 hours of on-duty service per day to have at least 8 consecutive hours off duty before operating a vehicle again.* (Section 18b-106.1 of the Law)

Agency Note: See 92 Ill. Adm. Code 386, Subpart C: Public Utility Exemptions, for provisions relating to possible exemptions from the IMCSR for applicable intrastate public utility commercial motor vehicles.

(Source: Amended at 28 Ill. Reg. 1161, effective January 4, 2004)

TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER d: MOTOR CARRIER SAFETY REGULATIONS

PART 396
INSPECTION, REPAIR AND MAINTENANCE

Section

396.1000	General
396.2000	Incorporation by Reference of 49 CFR 396
396.2010	Inspection of Vehicles in Operation

AUTHORITY: Implementing, and authorized by Sections 18b-102 and 18b-105 of, the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B].

SOURCE: Adopted at 14 Ill. Reg. 15512, effective September 10, 1990; amended at 15 Ill. Reg. 13167, effective August 21, 1991; amended at 16 Ill. Reg. 14431, effective September 8, 1992; amended at 18 Ill. Reg. 749, effective January 11, 1994; amended at 19 Ill. Reg. 13046, effective August 30, 1995; amended at 20 Ill. Reg. 15340, effective November 18, 1996; amended at 23 Ill. Reg. 5101, effective March 31, 1999; amended at 24 Ill. Reg. 1949, effective January 19, 2000; amended at 25 Ill. Reg. 2097, effective January 17, 2001; amended at 26 Ill. Reg. 9014, effective June 5, 2002; amended at 27 Ill. Reg. 9257, effective June 2, 2003.

Section 396.1000 General

This Part prescribes the requirements for the inspection, repair and maintenance of commercial motor vehicles in Illinois.

Section 396.2000 Incorporation by Reference of 49 CFR 396

- a) The Department incorporates "Inspection, Repair and Maintenance" (49 CFR 396) by reference, as that part of the Federal Motor Carrier Safety Regulations (FMCSR) (49 CFR 390, 391, 392, 393, 395, 396, and 397) that was in effect on October 1, 2002, subject only to the exceptions in subsection (c). No later amendments to or editions of 49 CFR 396 are incorporated.
- b) References to subchapters, parts, subparts, sections or paragraphs shall be read to refer to the appropriate citation in 49 CFR.
- c) The following interpretations of, additions to and deletions from 49 CFR 396 shall apply for purposes of this Part.

- 1) 49 CFR 396.9 is deleted and not incorporated.
- 2) Any commercial motor vehicle used in intrastate commerce that is inspected semi-annually pursuant to Section 13-109 of the Illinois Vehicle Code (the Code) [625 ILCS 5/13-109] has complied with the periodic inspection procedures required by 49 CFR 396.17.

(Source: Amended at 27 Ill. Reg. 9257, effective June 2, 2003)

Section 396.2010 Inspection of Vehicles in Operation

- a) Personnel authorized to perform inspections. The Illinois State Police are authorized to enter upon and perform commercial vehicle inspections (as defined in 92 Ill. Adm. Code 390.1020) of motor carrier vehicles in operation.
- b) Prescribed inspection report - the Illinois Commercial Driver/Vehicle Inspection Report (ISP 5-238) shall be used to record results of motor vehicle inspections conducted by Illinois State Police personnel.
- c) Motor Vehicles declared "Out-of-Service."
 - 1) Authorized Illinois State Police personnel shall declare and mark "out-of-service" any motor vehicle which meets the "North American Uniform Out-of-Service Criteria" as defined at 92 Ill. Adm. Code 390.1020. An "out-of-service" vehicle sticker shall be used to mark vehicles "out-of-service."
 - 2) No motor carrier shall require or permit any person to operate nor shall any person operate any motor vehicle declared and marked, "out-of-service" until all repairs required by the "out-of-service notice" have been satisfactorily completed. The term "operate" as used in this subsection shall include towing the vehicle, except that vehicles marked "out-of-service" may be towed away by means of a vehicle using a crane or hoist. A vehicle combination consisting of the emergency towing vehicle and an "out-of-service" vehicle shall not be operated until such combination meets the performance requirements of the IMCSR except for those conditions noted on the Illinois Commercial Driver/Vehicle Inspection Report (ISP 5-238).

- 3) No person shall remove the "out-of-service vehicle" sticker from any motor vehicle prior to completion of all repairs required by the "out-of-service notice."
- d) Motor Carrier's disposition.
 - 1) The driver of any motor vehicle receiving an inspection report shall deliver it to the motor carrier operating the vehicle upon his/her arrival at the next terminal or facility. If the driver is not scheduled to arrive at a terminal or facility of the motor carrier operating the vehicle within 24 hours, the driver shall immediately mail the report to the motor carrier.
 - 2) Motor carriers shall examine the report. Violations or defects noted thereon shall be corrected.
 - 3) Within 15 days following the date of the inspection, motor carriers shall certify that all violations noted have been corrected by completing the reverse side of the Illinois Commercial Driver/Vehicle Inspection Report (ISP 5-238) and returning it to the Illinois State Police Commercial Vehicle Enforcement Bureau's address indicated on the report.
 - 4) The motor carrier shall retain a copy of the ISP 5-238 at the motor carrier's principal place of business or where the vehicle is housed for 12 months from the date of the inspection.

(Source: Amended at 24 Ill. Reg. 1949, effective January 19, 2000)

TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER d: MOTOR CARRIER SAFETY REGULATIONS

PART 397
TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING

Section

- 397.1000 General
397.1010 Application
397.1020 Incorporation By Reference of 49 CFR 397

AUTHORITY: Implementing, and authorized by Sections 18b-102 and 18b-105 of, the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B].

SOURCE: Adopted at 3 Ill. Reg. 5, p. A1, effective February 1, 1979; codified at 8 Ill. Reg. 17986; recodified from 92 Ill. Adm. Code 397.Subchapter c at 14 Ill. Reg. 3281; Part repealed, new Part adopted at 14 Ill. Reg. 15496, effective September 10, 1990; amended at 15 Ill. Reg. 13158, effective August 21, 1991; amended at 18 Ill. Reg. 736, effective January 11, 1994; amended at 19 Ill. Reg. 13035, effective August 30, 1995; amended at 20 Ill. Reg. 15327, effective November 18, 1996; amended at 23 Ill. Reg. 5090, effective March 31, 1999; amended at 24 Ill. Reg. 1938, effective January 19, 2000; amended at 25 Ill. Reg. 2137, effective January 17, 2001; amended at 26 Ill. Reg. 9017, effective June 5, 2002; amended at 27 Ill. Reg. 9261, effective June 2, 2003.

Section 397.1000 General

This Part prescribes the requirements for driving and parking for each motor carrier engaged in the transportation of hazardous materials by a motor vehicle in Illinois.

Section 397.1010 Application

- a) This Part applies to each motor carrier engaged in the transportation of hazardous materials by a motor vehicle which must be marked or placarded in accordance with "Carriage by Public Highway" (49 CFR 177.823) and to:
- 1) Each officer or employee of the motor carrier who performs supervisory duties related to the transportation of hazardous materials; and,
 - 2) Each person who operates or who is in charge of a motor vehicle containing hazardous materials.

- b) Each person designated in subsection (a) must know and obey the rules in this Part.
- c) This Part does not apply to the transportation in Illinois of hazardous materials by a farmer when in approved containers and in the amounts and manner specified in 92 Ill. Adm. Code 171.22, Agricultural Exception.

(Source: Amended at 24 Ill. Reg. 1938, effective January 19, 2000)

Section 397.1020 Incorporation By Reference of 49 CFR 397

- a) The Department incorporates "Transportation of Hazardous Materials; Driving and Parking" (49 CFR 397) by reference as that part of the Federal Motor Carrier Safety Regulations (FMCSR) (49 CFR 390, 391, 392, 393, 395, 396, and 397) that was in effect on October 1, 2002, as amended at 67 FR 62191, October 4, 2002, subject only to the exceptions in subsections (b) and (c). No later amendments to or editions of 49 CFR 397 are incorporated.
- b) 49 CFR 397.1 is deleted and not incorporated.
- c) 49 CFR 397.2 is deleted and not incorporated.
- d) References to subchapters, parts, subparts, sections or paragraphs shall be read to refer to the appropriate citation in 49 CFR.
- e) The following addition to 49 CFR 397 shall apply for purposes of this Part.

Authorized Illinois State Police shall place drivers out-of-service for any violation of the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B] or the Illinois Motor Carrier Safety Regulations that warrants placing the driver out-of-service under the "North American Uniform Out-of-Service Criteria" as defined at 92 Ill. Adm. Code 390.1020.

(Source: Amended at 27 Ill. Reg. 9261, effective June 2, 2003)